OD-31

ITAT/179/2022
IA No.GA/1/2022
GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX, ASANSOL

-Versus-

ANSHUMAN DROLIA

Appearance:
Mr. Tilak Mitra, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 31st October, 2022.

The Court: We have heard Mr. Tilak Mitra, learned Advocate for the appellant. Notice has been served on the respondent/assessee, but none appears for the respondent/assessee.

There is a delay of 1009 days in filing the appeal. Since we are inclined to take up the main appeal for consideration, we exercise discretion and condone the appeal in filing the appeal.

Accordingly, the application for condonation of delay (IA No.GA/1/2022) stands allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 14th June, 2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.696/Kol/2019 for the assessment year 2015-16.

The revenue has raised the following substantial questions of law for consideration :

(i) *Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal below failed to appreciate that the period of holding the shares was found by the Assessing Officer to be less than one year ?*

(ii) *Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal below failed to consider that the assessee could not produce any evidence in support of his claim ?*

(iii) *Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal below erred in law that the claim in question under the category of Long Term Capital Gain ?*

(iv) *Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal is perverse on facts and erroneous in law ?*

(v) *Whether the Learned Tribunal below have mechanically overlooked the fact that the alleged defect in the penalty notice u/s. 274 is curable u/s. 292B of the Act ?*

We have heard Mr. Tilak Mitra, learned Advocate for the appellant.

On perusal of the order passed by the learned Tribunal we find that the tribunal had examined the factual position and found that the notice issued under Section 274 of the Act was defective. The Tribunal also followed the decision in the case of *CIT vs. Manjunatha Cotton & Ginning Factory*.

Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal ITAT/179/2022 stands dismissed.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das.